

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JACOB BIENER AND SARAH BIENER;

Plaintiffs,

Docket No.: 08-CV 6252

Judge Karas

Magistrate Judge Yanthis

ANSWER

-against-

JPMORGAN CHASE BANK, N.A.;
ROSICKI, ROSICKI & ASSOCIATES, P.C.

Defendants.
-----X

Rosicki, Rosicki & Associates, P.C., Pro Se, for its answer to the complaint, alleges as follows:

1. Denies knowledge or information as to each of the allegations in paragraph 1 of the complaint except denies that there were several and repeated violations of the Fair Debt Collection Act ("FDCPA"), negligence and infliction of emotional distress.

2. Denies the allegations in paragraph 2 which assert that this dispute involves predominant issues of federal law and that defendant has violated the provisions of the FDCPA; denies knowledge or information as to each of the remaining allegations.

3. Denies the allegations in paragraph 3 except denies knowledge and information as to the allegation that "Plaintiffs Jacob & Sarah Biener are natural persons residing at 15 Daweider Blvd. #303, Monroe, NY 10950."

4. Upon information and belief, admits the allegations in paragraph 4 of the complaint, except denies knowledge and information as to the allegation that JP Morgan Chase Bank is an "investment bank."

5. Denies the allegations in paragraph 5 except admits that Rosicki, Rosicki & Associates, P.C. is a law firm doing business at 51 E. Bethpage Road, Plainview, N.Y. 11803.

6. Upon information and belief, admits the allegations in paragraph 6 of the complaint.

7. Denies knowledge or information as to each of the allegations in paragraph 7 of the complaint.

8. Denies knowledge or information as to each of the allegations in paragraph 8 of the complaint.

9. Denies knowledge or information as to each of the allegations in paragraph 9 of the complaint.

10. Denies knowledge or information as to each of the allegations in paragraph 10 of the complaint, except admits that the mortgage held by JP Morgan Chase Bank NA was satisfied.

11. Upon information and belief, admits the allegations in paragraph 11 of the complaint.

12. Denies knowledge or information as to each of the allegations in paragraph 12 of the complaint.

13. Denies knowledge or information as to each of the allegations in paragraph 13 of the complaint.

14. Denies each of the allegations in paragraph 14 of the complaint.

15. Denies each of the allegations in paragraph 15 of the complaint, except admits that an action to foreclose the mortgage given by Sarah Biener to JP Morgan Chase Bank NA was filed in the Supreme Court, State of New York for Orange County on March 30, 2006 and an order dated July 6, 2006 granted summary judgment in favor of JP Morgan Chase Bank, NA.

16. Denies each of the allegations in paragraph 16 of the complaint.

17. The answering defendant repeats each of its prior statements in response to the allegations in paragraph 17 of the complaint.

18. Denies each of the allegations in paragraph 18, 19, 20, 21 and 22 of the complaint.

19. The answering defendant repeats each of its prior statements in response to the allegations in paragraph 23 of the complaint.

20. Upon information and belief, denies each of the allegations in paragraph 24 of the complaint.

21. Denies each of the allegations in paragraph 25 and 26 of the complaint.

22. The answering defendant repeats each of its prior statements in response to the allegations in paragraph 27 of the complaint.

23. Denies each of the allegations in paragraph 28 and 29 of the complaint.

FIRST AFFIRMATIVE DEFENSE

24. Each of the claims fails to state a claim upon which relief against the answering defendant may be granted.

SECOND AFFIRMATIVE DEFENSE

25. Jacob Biener is an improper party to this action since he voluntarily relinquished ownership to the mortgaged premises prior to the commencement of the foreclosure and he did not execute the note or mortgage that were the subject of the foreclosure action.

THIRD AFFIRMATIVE DEFENSE

26. The Rosicki law firm cannot be held liable under the FDCPA or under any other cause of action, for service of a court order upon a party's attorney—such action having been undertaken in compliance with the provisions, rules and procedures of New York State practice.

FOURTH AFFIRMATIVE DEFENSE

27. The Rosicki law firm acted in good faith.

FIFTH AFFIRMATIVE DEFENSE

28. The Rosicki law firm did not communicate with either of the plaintiffs and did not make any representations to either plaintiff.

SIXTH AFFIRMATIVE DEFENSE

29. Damages, if any, alleged to have been sustained by plaintiffs were caused, in whole or in part, by the culpable conduct of plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

30. To the extent that the plaintiffs' allegations contradict or differ from the findings made in State Court, such allegations are barred by collateral estoppel; res judicata; the *Rooker-Feldman* doctrine and all other applicable principles of law.

EIGHTH AFFIRMATIVE DEFENSE

31. There is no privity between the Rosicki law firm and the plaintiffs.

NINTH AFFIRMATIVE DEFENSE

32. The plaintiffs' allegations in paragraph 28 of their complaint contradict the findings made in State Court, and contradict the documentary evidence. Therefore these factual contentions, as well as the legal conclusions predicated thereon, are violative of Federal Rule Civil Procedure 11. In addition, the attempt by Jacob Biener to recover damages, even though he was not a party to the foreclosure, is violative of Rule 11.


NINTH AFFIRMATIVE DEFENSE

33. The plaintiffs do not have clean hands and are barred from injunctive or other equitable relief.

WHEREFORE, it is respectfully requested that the Court dismiss the complaint, together with attorney's fees, costs, disbursements and such other and further relief as may be just and proper.

Dated: Plainview, New York
August 22, 2008

ROSICKI, ROSICKI & ASSOCIATES, P.C.



By: ANDREW MORGANSTERN (ACM-7432)
Attorneys for ROSICKI, ROSICKI
& ASSOCIATES, P.C.
51 East Bethpage Road
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(516) 741-2585 x 121

To: Shmuel Klein, PC
Attorney for Plaintiffs
268 Route 59 West
Spring Valley, New York 10977

Att: Leonard Marinello
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Attorneys for JP Morgan Chase
226 Seventh Street, suite 200
Garden City, NY 11530

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SOUTHERN DISTRICT OF NEW YORK

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Plaintiffs,

-against-

JP MORGAN CHASE BANK, N.A.;
ROSICKI, ROSICKI & ASSOCIATES, P.C.,

Defendants.
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STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

WILLIAM D. LOPEZ, being duly sworn, deposes and says:
I am not a party to the within action; I am over the age of 18 years; and I reside at Nassau County, New York. On the 22nd day of August, 2008, I served the following:

Answer and Rule 7.1 statement

depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within the State of New York, addressed to each of the following persons at the last known address set forth after each name:

Shmuel Klein
268 Route 59 West
Spring Valley, New York 10977

Len Marinello
Pittoni, Bonchonsky & Zaino
226 Seventh Street, Suite 200
Garden City, NY 11530

Sworn to before me
on this 22nd day of
August, 2008

Notary Public


WILLIAM D. LOPEZ

MELISSA DAVIDSON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DA6126669
Qualified in Suffolk County
Commission Expires May 16, 2009

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Defendants.

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ANSWER

ROSICKI, ROSICKI & ASSOCIATES, P.C.
Defendant Pro Se
51 East Bethpage Road
Plainview, New York 11803
(516) 741-2585 x 121
RR&A NO.: 08-026835